THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not Reportable

Case no: J 712 / 12

In the matter between:

SANDI MAJAVU	**Applicant**
and	
LESEDI LOCAL MUNICIPALITY	**First Respondent**
ISAAC RAMPEDI N.O	**Second Respondent**
THE SPEAKER: LESEDI LOCAL MUNICIPAL COUNCIL	**Third Respondent**

Heard: **Considered in Chambers**

Delivered: **31 May 2017**

Summary: **Application for leave to appeal – no proper case for leave to appeal made out – application dismissed with costs**

JUDGMENT

SNYMAN, AJ

Introduction

[1] The current applicant for leave to appeal was the applicant in an urgent application to interdict disciplinary proceedings to be conducted against him at the first respondent.

[2] The matter was argued before me on 4 May 2017, and in an order granted on the same date, I dismissed the application with costs, with written reasons for the order to be handed down on 10 May 2017. Written reasons were then indeed handed down on 10 May 2017.

[3] However, and already on 5 May 2017, the applicant filed an application for leave to appeal. The applicant then filed two sets of written submissions in support of the application for leave to appeal, one being filed on 5 May 2017 and the second on 23 May 2017 after the written reasons had been handed down.

[4] The respondents opposed the application for leave to appeal, and filed their written submissions on 24 May 2017.

[5] Clause 15.2 of the Practice Manual provides that an application for leave to appeal will be determined by a Judge in chambers, unless the Judge directs otherwise. I see no reason why the application for leave to appeal needs to be dealt with in open Court, and I shall therefore determine the applicant's leave to appeal application in chambers.

Leave to appeal

[6] In deciding whether to grant leave to appeal to the Labour Appeal Court, the Labour Court must determine whether there is a reasonable prospect that another Court may come to a different conclusion to that of the Court *a quo*.[1]

[1] See *National Education Health and Allied Workers Union v University of Cape Town and Others* (2003) 24 ILJ 95 (CC) *; Karbochem Sasolburg (A Division of Sentrachem Ltd) v Kriel and Others* (1999) 20 ILJ 2889 (LC); *Ngcobo v Tente Casters (Pty) Ltd* (2002) 23 ILJ 1442 (LC); *Volkswagen SA (Pty) Ltd v Brand NO and Others* (2001) 22 ILJ 993 (LC); *Singh and Others v Mondi Paper* (2000) 21 ILJ 966 (LC); *Glaxo Welcome SA (Pty) Ltd v Mashaba and Others* (2000) 21 ILJ 1114 (LC).

[7] Recently, and in *Seathlolo and Others v Chemical Energy Paper Printing Wood and Allied Workers Union and Others*[2] the Court again considered the above test for leave to appeal and held:

> 'The traditional formulation of the test that is applicable in an application such as the present requires the court to determine whether there is a reasonable prospect that another court may come to a different conclusion to that reached in the judgment that is sought to be taken on appeal. … Further, this is not a test to be applied lightly — the Labour Appeal Court has recently had occasion to observe that this court ought to be cautious when leave to appeal is granted, as should the Labour Appeal Court when petitions are granted. The statutory imperative of the expeditious resolution of labour disputes necessarily requires that appeals be limited to those matters in which there is a reasonable prospect that the factual matrix could receive a different treatment or where there is some legitimate dispute on the law …'

[8] As a general proposition, the applicant's grounds for seeking leave to appeal are in essence nothing more but the applicant disagreeing with the conclusions I came to, especially where it came to the relevant provisions of law. To merely disagree with my conclusions does not establish a reasonable prospect of another Court coming to a different conclusion as envisaged by the test in considering an application for leave to appeal. The applicant has simply made out no proper case in this regard.

[9] The applicant also takes issue with the natter being dismissed on the basis of a lack of urgency. According to the applicant, the matter cannot be dismissed on the basis of a want of urgency. There are two insurmountable obstacles in the way of this ground of leave to appeal advanced by the applicant. The first is that is entirely competent and within the discretion of a presiding Judge to dismiss a matter where it is not urgent, if circumstances so dictate.[3] Considering the view I took on the issue of res judicata, the following dictum from the judgment in *Jiba v Minister: Department of Justice and Constitutional Development and Others*[4] is apposite, where the Court said:

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[2] (2016) 37 ILJ 1485 (LC) at para 3.
[3] See *National Union of Metalworkers of SA and Others v Bumatech Calcium Aluminates* (2016) 37 ILJ 2862 (LC); *SA Post Office Ltd v Moloi NO and Others* (2012) 33 ILJ 715 (LC); *Sekwati v Masiya and Others* (2011) 32 ILJ 2219 (LC).
[4] (2010) 31 ILJ 112 (LC) at para 21.

> 'In view of my findings on the other relief sought by the applicant, little purpose would be served in striking the matter from the roll. I intend therefore to dismiss the application.'

In casu, the circumstances certainly dictated that the matter not be struck form the roll, but be dismissed. This is because I specifically considered the issue of *res judicata*, and dismissed the application on this basis as well. I can simply see no reasonable prospect of another Court coming to a different conclusion in this respect.

[10] On the issue of *res judicata per se*, the applicant simply advances the same arguments as advanced before. Just as I was unimpressed with these arguments before, I remain unconvinced that there is any reasonable prospect that another Court could some to a different conclusion in this regard. The applicant has advanced no sustainable argument to convince me, based on the detailed reasoning I provided in the written judgment of 10 May 2017, that such judgment could be wrong, and that there is a reasonable prospect of another Court deciding otherwise. The authorities are clear, and the applicant seems completely unable to grasp the import thereof.

[11] The applicant has even gone so far as to make accusations of bias, and in this respect, has chosen to quote individual words out of my judgment, entirely out of context, and then sought to attach a meaning to these words which were simply unfounded. It is my view that on the merits of the matter, properly considered, the applicant's application before me was actually an attempt to circumvent the consequences of the earlier identical matter having been dismissed by Van Niekerk J. How this conclusion can be seen as bias is beyond comprehension. There is no reasonable prospect of another Court coming to a different conclusion in this respect.

[12] The applicant also takes issue with the conclusion I came to, where it comes to what is contained in the founding affidavit about deductions from his salary and the conduct of the acting municipal manager. These statements were in my view gratuitous, could not add to the relief sought, were not supported by any other evidence than the mere *ipse dixit* of the applicant, and designed

simply to provide emotive back up for the applicant's case. The fact that I saw the case in this way cannot make my conclusion biased. In essence, the applicant is saying that because I disagreed with him on the merits of his allegations of unlawfulness and the like, I am biased. The suggestion is unsustainable, and there exists no reasonable prospect of another Court coming to a different conclusion.

[13] The applicant has failed to address several of the pertinent legal principles I dealt with in my judgment, especially those relating to urgency and *res judicata*. In my view, there is no reasonable prospect of another Court, in light of these clear legal principles, coming to a conclusion different to the one I came to.

[14] I thus conclude that the applicant, overall, has shown no reasonable prospect that another Court could come to a different conclusion, and the leave to appeal application must fail.

[15] As to costs, the respondents opposed the matter and asked for costs. On the same basis as ventilated in my written reasons of 10 May 2017, I still consider that a costs award against the applicant remains justified.

Order

[16] In the premises, I make the following order:

1. The applicant's application for leave to appeal is dismissed with costs.

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S Snyman

Acting Judge of the Labour Court

Appearances:

For the Applicant:	Wakaba & Partners Inc Attorneys
For the Respondents:	Tshiqi Zebediela Inc Attorneys